

IN THE EXECUTIVE ETHICS COMMISSION  
OF THE STATE OF ILLINOIS

IN RE: MARCIA D. JOHNSON

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No. 12-EEC-012

Appeal of OEIG  
Revolving Door  
Determination

DECISION

This cause is before the Executive Ethics Commission ("Commission") on appeal by the Office of the Attorney General from a determination by the Office of the Executive Inspector General for Agencies of the Illinois Governor.

FINDINGS OF FACT

A complete copy of the record of proceedings has been reviewed by the members of the Executive Ethics Commission. The record consists of the Attorney General's May 14, 2012 Brief in Support of Appeal, and the Office of the Executive Inspector General for Agencies of the Illinois Governor's May 17, 2012 Comments to the Illinois Attorney General's Appeal of Its Revolving Door Determination, May 17, 2012 comments from the School Association for Special Education of DuPage County, and the Illinois State Board of Education, May 18, 2012 comments from Marcia D. Johnson, and May 22, 2012 Reply Comments to the Illinois Attorney General's Appeal of Its Revolving Door Dermination.

Based upon this record, the Commission makes the following findings of fact:

1. On May 2, 2012, the Office of the Executive Inspector General for Agencies of the Illinois Governor (OEIG) made a revolving door determination pursuant to 5 ILCS 430/5-45(f) with respect to Marcia D. Johnson's (Johnson) proposed employment with the School Association for Special Education of DuPage County.
2. The determination concluded that "**you are not restricted** from accepting the employment opportunity described in your materials by the Revolving Door prohibitions of the State Officials and Employees Ethics Act." (emphasis in original).
3. On Monday, May 14, 2012, the Office of the Illinois Attorney General filed a brief in support of its appeal.
4. Johnson was employed by the Illinois State Board of Education (ISBE) as a Division Supervisor. She served in this capacity since November 16, 2007.

5. In October 2011, Johnson was one of five ISBE employees who scored a grant application from the School Association for Special Education in DuPage County (SASED).
6. SASED's grant application resulted in a grant award of about \$4 million to SASED.
7. SASED has offered Johnson a position as Illinois Statewide Technical Assistance Center Coordinator.
8. This coordinator position was created as part of the request for sealed proposals submitted by SASED to ISBE and scored by Johnson. Johnson plans to terminate her employment with ISBE and begin employment with SASED on June 1, 2012.
9. The OEIG has objected to the Commission's jurisdiction in this matter, claiming that the appeal filed by the Attorney General was untimely. The OEIG has not commented on the substance of the Attorney General's appeal.
10. The Commission has sought written public opinion on this matter by posting the appeal on its website and posting a public notice at its offices in the William Stratton Building.

#### CONCLUSIONS OF LAW

1. An Executive Inspector General's determination regarding revolving door restrictions may be appealed to the Commission by the person subject to the decision or the Attorney General no later than the 10<sup>th</sup> calendar day after the date of the determination. 5 ILCS 430/5-45(g).
2. Though the tenth day after the OEIG determination fell on a Saturday, the Attorney General filed its appeal on Monday, May 14, 2012. The Statute on Statutes provides:

Sec. 1.11. The time within which any act provided by law is to be done shall be computed by excluding the first day and including the last, unless the last day is Saturday or Sunday or is a holiday as defined or fixed in any statute now or hereafter in force in this State, and then it shall also be excluded. If the day succeeding such Saturday, Sunday or holiday is also a holiday or a Saturday or Sunday then such succeeding day shall also be excluded.

5 ILCS 70/1.11
3. The present appeal of the May 2, 2012 revolving door determination made by the OEIG pursuant to 5 ILCS 430/5-45(f) with respect to Marcia D. Johnson's proposed employment is properly before the Commission and the Commission has jurisdiction to consider the appeal.
4. Subsection (a) of the revolving door section of the State Officials and Employees Ethics Act currently provides:

No former officer, member, or State employee, or spouse or immediate family member living with such person, shall, within a period of one year immediately after termination of State employment, knowingly accept employment or receive compensation or fees for services from a person or entity if the officer, member, or State employee, during the year immediately preceding termination of State employment, participated personally and substantially in the award of State contracts, or the issuance of State contract change orders, with a cumulative value of \$25,000 or more to the person or entity, or its parent or subsidiary.

5 ILCS 430/5-45(a).

5. Johnson participated personally and substantially in the award of a State contract with a cumulative value of \$25,000 or more to her prospective employer when in October 2011 she scored a grant application from SASSED that resulted in a grant to SASSED in excess of \$4 million.
6. Johnson's personal and substantial participation in this matter occurred within one year of her proposed termination of State employment on May 15, 2012.
7. The Ethics Act provides that "[i]n deciding whether to uphold an Inspector General's determination, the appropriate Ethics Commission...shall assess, in addition to any other relevant information, the effect of the prospective employment or relationship upon the decisions referred to in subsections (a) and (b), based upon the totality of the participation by the former officer, member, or State employee in those decisions." 5 ILCS 430/5-45(g).
8. The Commission considers the following relevant information as aggravating:
  - a. The grant application scored by Johnson created the coordinator position that Johnson is now seeking to fill.
9. The Commission considers the following relevant information as mitigating:
  - a. Johnson was one of five ISBE employees who scored SASSED's grant application.
10. Considering all relevant information and the effect of the prospective employment upon the contract award decisions referred to in subsection (a) of 5 ILCS 430/5-45, the Commission finds, based upon the totality of the participation by the employee in those decisions, that Johnson participated personally and substantially in an award of a State contract with a cumulative value of \$25,000 or more to her prospective employer within one year of his termination of State employment.

WHEREFORE, for the foregoing reasons, the Commission grants the Attorney General's appeal and vacates the Office of the Executive Inspector General's May 2, 2012 determination. Johnson's proposed employment with SASSED would violate the State Officials and Employees Ethics Act's revolving door prohibition.

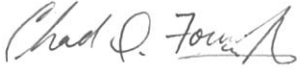
This is a final administrative decision and subject to the Administrative Review Law.

ENTERED: May 24, 2012

SO ORDERED.

The Executive Ethics Commission

By:

A handwritten signature in cursive script, appearing to read "Chad D. Fornoff", written over a horizontal line.

Chad D. Fornoff  
Executive Director